

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LATONIA SMITH,

Plaintiff

Case No. 3:23-cv-00175-ART-CSD

ORDER

v.

NAPHCARE US, INC. and NAPHCARE,
INC.,

Defendants

Federal inmate Latonia Smith brings this civil-rights action under 42 U.S.C. § 1983, alleging that her constitutional rights were violated when she was detained at Washoe County Detention Facility and consistently denied breakfast and lunch meals that met her dietary needs for many months. (ECF No. 1-1). Plaintiff moves for leave to file a first amended complaint, arguing that she forgot to include key facts in her original complaint. (ECF No. 5). The Court grants Plaintiff's motion for leave to amend. But this action cannot proceed because Plaintiff has neither paid the full \$402 filing fee nor applied to proceed *in forma pauperis*. So the Court grants Plaintiff an extension of time to correct that deficiency.

I. MOTION FOR LEAVE TO AMEND

Plaintiff moves for leave to file an amended complaint, arguing she forgot to allege key facts in her original complaint, and attaches the proposed first amended complaint to her motion. (ECF Nos. 5, 5-1). Federal Rule of Civil Procedure 15(a)(2) instructs that "[t]he court should freely give leave [to amend] when justice so requires." An amended complaint replaces the complaint before it, so the amended complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989). This means an amended complaint must contain all claims, defendants, and factual allegations that the plaintiff wishes to pursue in the lawsuit.

Plaintiff's proposed first amended complaint appears to be complete and contain substantially all the information required on the Court's form civil-rights complaint. See

1 Nev. Loc. R. LSR 2-1. The Court therefore grants Plaintiff's motion to file an amended
 2 complaint. If Plaintiff timely complies with the remainder of this order, the Court will screen
 3 Plaintiff's first amended complaint in the ordinary course.

4 **II. FILING FEE OR APPLICATION TO PROCEED *IN FORMA PAUPERIS***

5 This Court must collect filing fees from parties initiating civil actions. 28 U.S.C.
 6 § 1914(a). The fee for filing a civil-rights action is \$402, which includes the \$350 filing fee
 7 and the \$52 administrative fee. See 28 U.S.C. § 1914(b). "Any person who is unable to
 8 prepay the fees in a civil case may apply to the court for leave to proceed *in forma*
 9 *pauperis*." Nev. Loc. R. LSR 1-1. For an inmate to apply for *in forma pauperis* status, the
 10 inmate must submit **all three** of the following documents to the Court: (1) a completed
 11 **Application to Proceed *in Forma Pauperis* for Inmate**, which is pages 1–3 of the
 12 Court's approved form, that is properly signed by the inmate twice on page 3; (2) a
 13 completed **Financial Certificate**, which is page 4 of the Court's approved form, that is
 14 properly signed by both the inmate and a prison or jail official; and (3) a copy of the
 15 **inmate's prison or jail trust fund account statement for the previous six-month**
 16 **period**. See 28 U.S.C. § 1915(a)(1)–(2); Nev. Loc. R. LSR 1-2. *In forma pauperis* status
 17 does not relieve an inmate of his or her obligation to pay the filing fee, it just means that
 18 the inmate can pay the fee in installments. See 28 U.S.C. § 1915(b).

19 **III. CONCLUSION**

20 It is therefore ordered that Plaintiff's motion for leave to file an amended complaint
 21 (ECF No. 5) is granted.

22 It is further ordered that Plaintiff has **until January 15, 2024**, to either pay the full
 23 \$402 filing fee or file a fully complete application to proceed *in forma pauperis* with all
 24 three required documents: (1) a completed application with the inmate's two signatures
 25 on page 3, (2) a completed financial certificate that is signed both by the inmate and the
 26 prison or jail official, and (3) a copy of the inmate's trust fund account statement for the
 27 previous six-month period.
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1 Plaintiff is cautioned that this action will be subject to dismissal without prejudice if
2 she fails to timely comply with this order. A dismissal without prejudice allows Plaintiff to
3 refile the case with the Court, under a new case number, when she can file a complete
4 application to proceed *in forma pauperis* or pay the required filing fee.

5 The Clerk of the Court is directed to (1) file the first amended complaint (ECF
6 No. 5-1) and (2) send Plaintiff Latonia Smith the approved form application to proceed *in*
7 *forma pauperis* for an inmate and instructions for the same.

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9 DATED THIS 15th day of November 2023.

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12 UNITED STATES MAGISTRATE JUDGE
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